



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ELC LAND CASE NO. E200 OF 2024

EVAN KAMAU MUTURI.....
PLAINTIFF

VERSUS

JOYCE WANJIRU MUTURI.....1ST
DEFENDANT

EDITH NG'ENDO MUTURI.....2ND
DEFENDANT

WINFRED WANJIRU MUTURI.....3RD
DEFENDANT

PETER NDUNGI NJOROGE.....4TH
DEFENDANT

JUDGMENT

1. Vide a Plaint dated 20/11/2024 the Plaintiff filed a suit against the Defendants seeking the following orders:

- a) A permanent injunction restraining the Defendants, his servants, employees and/or agents from trespassing, encroaching or inheriting with the Plaintiff use of Land Reference No. 6782/36 (org No. 6782/16) situated at KIAMBU EAST OF LIMURU TOWN).***

- b) An order directing the Defendants to forthwith vacate the suit property known as Land Reference No. 6782/36 (org No. 6782/16) situated at KIAMBU EAST OF LIMURU TOWN.***
- c) An order directing the OCS Tigoni Police Station to provide in effecting the orders sought in (b) above***
- d) Damages for illegal trespass and occupation of Land Reference No. 6782/36 (org No. 6782/16) situated at KIAMBU EAST OF LIMURU TOWN.***
- e) Costs of the suit.***
- f) Any other or further relief this Court may deem fit to grant.***
2. The suit is undefended but I will still provide a brief background of the Plaintiff's case. Since the suit is undefended, the following averments stand uncontroverted before the Court.
3. In summary the case against the 1st, 2nd, 3rd and 4th Defendants is that the dispute concerns a parcel of land known as **LR. NO. 6782/36** (originally part of LR. NO. 6782/16), situated in Kiambu East, Limuru Town.
4. The Plaintiff claims ownership of the land through a transfer from his late father, Joseph Muturi Njoroge, in 1995. That in November 2023, the Plaintiff subdivided the original parcel

(LR. NO. 6782/16) into several plots, specifically units 6782/31 through 6782/36.

5. The Plaintiff asserts he enjoyed quiet possession of the land until the Defendants interfered.
6. The Plaintiff alleges that in 2019, the Defendants illegally entered and occupied a portion of the property (LR. NO. 6782/36). That following the encroachment, the Plaintiff attempted to resolve the matter personally by asking the Defendants to vacate on several occasions, but they refused.
7. In 2022, the matter was reported to the Tigoni Police Station. However, the OCS's attempts to facilitate an eviction were unsuccessful as the Defendants remained adamant.
8. The Plaintiff maintains that the Defendants' continued presence is illegal and prevents him from carrying out any meaningful development on his land.
9. Because the Defendants have ignored formal demands and notices of intention to sue, the Plaintiff has approached this Honorable Court seeking the prayers made in paragraph one (1) of the plaint. prays for the following from the Court:

The Plaintiff's Case

10. The matter was scheduled for hearing on 09/12/2025 and the Defendants despite being served did not attend the hearing. Earlier the Plaintiff had made a request for Judgment dated 17/06/2025 but the Court chose to have the matter heard.

11. At the hearing the Plaintiff adopted his witness statement as his evidence in chief dated 20/11/2024 and a list of documents of even date as Plaintiff's exhibit 1-7. The Plaintiff asked the Court to grant him the suit property. He testified that he inherited the suit property from his late father but that the 4th Defendants have encroached on his land.
12. It was his testimony that the title is in his name and the land is registered under the Government Land Act (repealed). He averred to have filed the Letter of Allotment and that he obtained the land through inheritance and that the land was transferred to him while his father was alive.
13. The Court directed the Plaintiff to file his submissions which were filed dated 19/12/2025.
14. The gist of the submissions is that since the case is undefended, the Plaintiff emphasizes that his evidence remains unchallenged and should be accepted as fact.
15. He submits that the Court needs to consider four issues being:
 - a) Whether the Plaintiff is the lawful registered proprietor of L.R. No. 6782/36.**
 - b) Whether the Defendants unlawfully trespassed and encroached upon the suit property.**
 - c) Whether the Plaintiff is entitled to permanent**

injunctive and eviction orders.

d) Whether the Plaintiff is entitled to damages for trespass.

16. On the first issue the Plaintiff relies on the Land Registration Act, 2012 to anchor his claim and he states that **Sections 24, 25 and 26(1)** establish that registration of a person as the proprietor of land is conclusive evidence of absolute ownership. As such the Plaintiff submits that his title is indefeasible that it cannot be defeated, as the Defendants have not proven any fraud or illegality to challenge his ownership.
17. The Plaintiff cites three specific cases to support his arguments namely; **Elijah Makeri Nyang'wara v Stephen Mungai Njuguna & Another [2013] eKLR**, in which case the Court reaffirms that a registered owner's title is absolute and protected by law unless fraud is proved. The second case he refers to is the case of **Park Towers Ltd v John Mithamo Njika & 7 Others [2014] eKLR**, where the Court in its decision establishes that once ownership is proven, any unauthorized occupation is a trespass that entitles the owner to Court relief. Lastly the case of **Philip Aluchio v Crispinus Ngayo [2014] eKLR**, from which decision the Court confirms that that trespass is actionable ***per se***. Meaning the Court can award damages simply because the

trespass happened, even if the owner didn't prove a specific financial loss.

18. The Plaintiff highlights that the Defendants were served repeatedly, even with police assistance, but chose to ignore the Court. That by failing to file a defense, the Plaintiff argues the Defendants have silently admitted to the trespass or rather that this is a tacit admission to the claim of trespass raised by the Plaintiff against them.

19. Thus, the Plaintiff specifically requests the Court to involve the OCS Tigoni Police Station to ensure the eviction is actually carried out, citing the Defendants' history of defiance. In concluding his submissions, the Plaintiff urges the Court to uphold the sanctity of title and not reward the Defendants' impunity. He prays for judgment to be entered exactly as requested in his original Plaint.

Analysis and Final Orders

20. The Plaintiff moved this Court by way of a Plaint dated 20/11/2024, seeking a permanent injunction, an eviction order and damages for trespass against the four Defendants. Despite being duly served with Summons and the Plaint the Defendants failed to file a Memorandum of Appearance or a Defense. Consequently, this suit proceeded as an undefended matter.

21. Having considered the pleadings and the written submissions, the Court identifies the following issues for determination:

- i. Whether the Plaintiff holds a valid and indefeasible title to the suit property.
- ii. Whether the Defendants' entry and continued stay on the property constitutes trespass.
- iii. Whether the Plaintiff is entitled to the reliefs sought.

22. On the issue of ownership and indefeasibility of title, the **Plaintiff** testified that he became the registered owner of **LR. NO 6782/36** (Original No. 6782/16) following a transfer from his late father in 1995. Under Sections 24 and 25 of the Land Registration Act, 2012, registration vests in the proprietor absolute ownership. Furthermore, Section 26(1) provides that a Certificate of Title shall be taken by all Courts as prima facie evidence of ownership.

23. The Court relies on the precedent in **Elijah Makeri Nyang'wara v Stephen Mungai Njuguna (supra)**, which affirms that a title is indefeasible unless fraud or illegality is proven. In this case, the Defendants have offered no challenge to the Plaintiff's title. The Court is also guided by the English principle in **Dutton v Manchester City Council [1999], EWCA 844** which underscores that a party with a superior possessory interest is entitled to exclude others who have no legal color of right.

24. On the issue of trespass and unlawful occupation, the law is clear on the issue of trespass and states that trespass to land consists of any unjustifiable intrusion by one person onto land in the possession of another. The Plaintiff's evidence that the Defendants entered the land in 2019 without his consent remains unchallenged.

25. As held in **Park Towers Ltd v John Mithamo Njika [2014] eKLR**, once a Plaintiff proves ownership and the Defendant fails to show a license or lease, the Court must find that trespass has occurred. Under the common law principle established in **Entick v Carrington (1765) EWHC KB J98**, where the Court decreed that;

"... our law holds the property of every man so sacred, that no man can set his foot upon his neighbour's close without his leave."

26. By staying on the land despite police intervention and formal notices, the Defendants' actions satisfy the definition of continuing trespass.

27. The Plaintiff seeks a permanent injunction and an eviction order and damages. Equity provides that where a legal right is continuously infringed, an injunction is the most appropriate remedy. Further, regarding damages, the Court notes that trespass is actionable *per se* meaning that the Plaintiff does not need to prove specific financial loss to be entitled to general damages. The Defendants' occupation

since 2019 has deprived the Plaintiff of the quiet enjoyment and development of his property. Following the reasoning in **Philip Aluchio v Crispinus Ngayo (supra)**, the Court finds that the Plaintiff is entitled to compensation for this interference.

Final Disposition

28. In view of the foregoing, this Court finds that the Plaintiff has proved his case on a balance of probabilities. Judgment is hereby entered for the Plaintiff against the Defendants jointly and severally for:

- a) A permanent injunction is hereby issued restraining the Defendants, their agents, and/or servants from trespassing, encroaching, or in any way interfering with the Plaintiff's use of Land Reference No. 6782/36 (org No. 6782/16) situated at KIAMBU EAST OF LIMURU TOWN.***
- b) An order of eviction is hereby issued against the Defendants from Land Reference No. 6782/36 (org No. 6782/16) situated at KIAMBU EAST OF LIMURU TOWN the suit property.***
- c) An order is hereby issued directing the OCS Tigoni Police Station to provide security and assistance in the execution of the eviction order.***
- d) General damages for trespass in the sum of Kesh 1,000,000 is awarded to the Plaintiff to be paid***

by the Defendants jointly and severally from the date of this Judgment till payment in full including interest at Court rates.

e) Costs of this suit to be borne by the Defendants jointly and severally.

Orders accordingly.

DATED, SIGNED AND DELIVERED AT THIKA THROUGH MICROSOFT TEAMS ON 2ND MARCH 2026.

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**MOGENI J
JUDGE**

In the presence of:-

..... for Plaintiff

..... 1st - 4th Defendants

Melita..... Court Assistant

.....
**MOGENI J
JUDGE**

ORIGINAL